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Raising the age of criminal responsibility: endless debate, limited progress

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The minimum age of criminal responsibility (MACR) is a controversial and contested issue, subject to political wrangling, public concern and academic scrutiny. The age of criminal responsibility is the minimum age at which a child who commits an offence is considered to have attained the necessary maturity to understand their actions, can be charged and held responsible in a criminal procedure. Northern Ireland (along with England and Wales) has one of the lowest ages of criminal responsibility in Europe, with children being held responsible for their actions from the age of ten.

Although there has been recent attention directed towards rules governing the MACR, the debate on setting an appropriate age is not new. Since as early as the 14th century there has been an accepted common law position that young children lack the same level of understanding as adults and therefore should not be deemed fully responsible for their actions. This resulted in the setting of the minimum age initially at seven years and the introduction of the doctrine of *doli incapax*.¹ While the age did move to eight and eventually ten, no further changes were ever implemented despite endless recommendations made regarding the levels of protection from criminal liability afforded to children.

The chorus for change

Whilst the last three decades have seen a significant shift in attitudes towards the treatment of children and young people in conflict with the law, at an international level there has again been recognition of the special provisions needed for children who come into contact with the justice system. The UN Committee on the Rights of the Child (UNCRC) recommends that any MACR 'shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity' and that 'there should be a close relationship between the notion of criminal responsibility and other social rights and responsibilities (such as marital status, civil majority, etc.)'.² Despite this, clear disparities exist between criminal responsibility and social responsibilities, as well as divergence between Northern Ireland and other European countries (see Table 1).

Table 1: Rights and Responsibilities: European Comparisons

Country	Age of criminal responsibility	Age of consent	Marriage (with parental consent)	Age of majority (voting rights)	Obtaining driving license (supervised)	Buying cigarettes
N. Ireland	10	16	18 (16)	18	17	18
Austria	14	14	18 (16)	16	18	16
Germany	14	14	18 (16)	18	18 (17)	18
Italy	14	14	18 (16)	18	18 (17)	18
Spain	16	16	18 (16)	18	18	18
Belgium	18	16	18 (16)	18	18	16
Luxembourg	18	16	18 (16)	18	18 (17)	18

Source: Adapted from Include Youth (2015) Raise the Age Briefing³

In 1995 the UN Committee presented its first report on the UK's compliance with the international child rights standards it signed up to in 1989 (the UNCRC). Among these is a recommendation that a MACR below the age of 12 is not internationally acceptable, and that 14-16 years would be more in line with UNCRC Article 40 which specifies that States should deal with children in conflict with the law without resorting to judicial proceedings. Over 20 years later, the Committee continue to call on the UK to meet these minimum international standards.

At a local level too have been calls and campaigns for change – from the [Children's Commissioner](#), child rights organisations such as [Include Youth](#), and an independent panel of experts who undertook a review of the Youth Justice System in Northern Ireland. Based on an analysis of local evidence, human rights standards and public consultation, they recommended that the MACR 'be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14'.⁴

The evidence

The evidence too is fairly consistent. Evolving from developmental psychology and neuroscience, much of it focuses on the developmental differences of children and adults, and thus children's diminished capacity and subsequent culpability. Delays in emotional, intellectual and mental maturity impact on decision-making ability, impulse controls and levels of understanding (Delmage, 2013).⁵ On this basis it is questioned if children should be subject to the full weight of the criminal law in the same way as adults. Goldson⁶, however, warns against the use of the capacity argument, cautioning that the same rationale could be used to breach children's entitlement to other rights (e.g. to participate in decisions affecting them). A more socially based critique reminds us that children in the youth justice system represent some of our most vulnerable. A low age of criminal responsibility means that we are responding to welfare issues with criminal justice responses, and potentially damaging the prospects of these young people. Raising the MACR, therefore, would minimise social harm.⁷

Political impasse and public concern

The wealth of evidence in support of raising the age of criminal responsibility has not been matched by policy development. The MACR is a political 'hot potato', used by Conservative and Labour governments in the 1990s and 2000s as part of their law and order election campaigns and 'tough on crime' rhetoric. While more recent governments have been less vocal on the issue, their silence is instructive. Publicly supporting an increase in the MACR may be deemed as being 'soft on crime' - an unlikely election winner.

In Northern Ireland the political landscape is, perhaps unsurprisingly, more divided. The previous Minister for Justice, David Ford, expressed publicly his support for raising the age, as did a number of other political parties. The Democratic Unionist Party (DUP), however, have consistently opposed any such move citing the killing of James Bulger by two 10 year old boys as evidence for the need to retain a low age of criminal responsibility. Child killing and serious offending is, however, rare. Indeed, no 10 or 11 year olds in Northern Ireland have been charged with committing a serious crime.⁸ Further, raising the MACR does not reflect a lack of will to respond to challenging behaviour, or to hold children accountable; it is rather concerned with responding through means that do not criminalise them. This is in recognition that early contact with the criminal justice system can be the best predictor of future criminal behaviour.⁹

Such political views, however, gain media attention and can play on public fears about young people. This is particularly pertinent in the local context of transition from conflict where it is felt in some communities that there is already a policing vacuum and young people are out of control.¹⁰ Reasons for not raising the age of criminal responsibility, therefore, may have more to do with historical and culture tradition (e.g. punitiveness), party politics and public perceptions of young people, rather than any evidence base.

Where now?

Since the publication of the Youth Justice Review (YJR), and despite a level of public support for raising the age (albeit with 'some caveats'),¹¹ the political momentum for reviewing the age of criminal responsibility has wavered. In 2013 the Criminal Justice Inspection reported that a 'lack of evidence from public consultation raised doubts about there being sufficient momentum to bring about this change [Recommendation 29].¹² A year later, the YJR Implementation Plan reported that no progress had been made,¹³ and while a 2016 Scoping Study steering group further advanced proposals to raise the age,¹⁴ it was again stated that further consultation was needed before moving forward.

While political consensus may be lacking, and there are consistent calls for further public consultation, evidence of public attitudes is in existence. Not only are there consultation responses to the recommendations of the YJR team, but more recently, there has been survey evidence via the [2016 Kids' Life and Times survey](#) of over 5,000 children in Northern Ireland. The largest of its kind, with the very age group impacted by the current age of criminal responsibility, the survey findings revealed that a high proportion of children (59%) are in favour of raising the MACR, with the majority of respondents reflecting UN Committee recommendations to increase it to 14 or 16 years old.¹⁵

This new evidence, we believe, represents the type of consultation that is needed on this issue, involving the very age group affected by it. This, alongside the wealth of existing evidence, and the Northern Ireland Assembly's claimed commitment to the protection and promotion of children's rights, should act as impetus to progress the recommendation to raise the MACR.

1. *The notion of doli incapax or 'incapable of mischief' established the presumption that children in conflict with the law must demonstrate their understanding of the difference between right and wrong, between 'good' and 'evil' and the wrongness of their act before found criminally responsible.*
2. *UN Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules'), adopted by General Assembly resolution 40/33 of 29 November 1985.*
3. Accessible at: <http://www.includeyouth.org/mgmt/resources/briefingraisetheagenifeb2015>
4. *Youth Justice Review (2011) A Review of the Youth Justice System in NI, Department of Justice NI (Recommendation 29).*
5. *Delmage, E. (2013) 'The Minimum Age of Criminal Responsibility: A Medico Legal Perspective', Youth Justice, 13 (2): 102-110.*
6. *Goldson, B. (2013) 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales', Youth Justice, 13 (2): 111-130.*
7. *Ibid*
8. *See footnote 3*
9. *McAra, L. and McVie, S. (2007) 'Youth Justice? The impact of system contact on patterns of desistance from offending', European Journal of Criminology, 4 (3): 315-345.*
10. *McAlister, S., Scraton, P. and Haydon, D. (2014) 'Childhood in transition: Growing up in "post-conflict" Northern Ireland', Children's Geographies, 12 (3): 297-311.*
11. *Committee for Justice Review of Youth Justice, 31 May 2012, NIA Official Report (Hansard) 2011-12.*
12. *Criminal Justice Inspection Northern Ireland (2013) Monitoring of Progress on Implementation of the Youth Justice Review Recommendations, p.8.*
13. *Department of Justice (2014) Youth Justice Review Implementation Plan. Update No. 3 January 2014, available at <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/implementation-plan-update-jan2014.pdf>.*
14. *NIA Official Report (Hansard), Ministerial Statement: Children in the Justice System: Scoping Study, 14 March 2016*
15. *McAlister, S., Carr, N., Dwyer, C. and Lloyd, K. (2017) Raise the age? Children's attitudes towards the minimum age of criminal responsibility, ARK. Accessible at: <http://www.ark.ac.uk/publications/updates/update113.pdf>*

Notes



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Clare's main research interests lie in the areas of former prisoners and transitional justice, conflict transformation and young people, crime and justice. Her current research includes an examination of the experiences of children

and young people growing up on an interface, the implications for the social needs, mental health and lifetime opportunities; the experiences of young people with community justice/punishment; young people and the impact of having a criminal record; and the flag protests, policing response and community impact.

She is co-author of [Criminal Justice in Transition: The Northern Ireland Context \(2015\)](#) (with Dr Anne-Marie McAlinden), and has published articles in the *Studies in Conflict and Terrorism*, *Contemporary Justice Review*, *British Journal of Criminology* and the *International Journal of Transitional Justice*.



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Siobhan's main research interests are in the broad fields of youth, social justice and criminal justice. She has a particular interest in in-depth qualitative research with marginalised groups, including those

who have experience of care and/ or justice systems. Recent projects include 'Identifying and challenging the negative media representation of children and young people in Northern Ireland' – (with Phil Scraton and Faith Gordon) and 'Experiencing rights, risks and justice? Young people in a transitional society'.

She is author of ['Negotiating Risky Research: Reflections on research with marginalised youth in a conflict-affected society, in BERA Research Intelligence. 2017'](#)